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Appeal of Russell G. Holt

The issue presented in this appeal is whether appellant is entitled to a claimed loss carryback deduction.

Appellant filed a timely 1981 return and, in February, 1982, filed an amended 1981 California personal income tax return which indicated a decrease in taxable income, resulting from the carryback to 1981 of a commodity futures loss incurred in 1982. On the amended return, appellant reported a tax liability of \$7,170 and indicated that in 1981 he had withholding of \$5,738 and that he had paid an additional \$6,799 when he filed the original return. He, therefore, claimed a refund of \$5,367. Respondent denied this claim on the ground that California law has no provision authorizing a loss carryback, and this appeal resulted. After denying the claim, respondent determined that it had no record of having received the \$6,799 payment appellant contends he made, and it twice requested substantiation of this payment. Appellant has failed to provide any substantiation.

In an appeal from a denial of a claim for refund, the taxpayer bears the burden of proving that he overpaid his taxes and, therefore, is entitled to the claimed refund. (Hall v. Franchise Tax Board, 244 Cal.App.2d 843 [53 Cal.Rptr. 597] (1966)). Since appellant has produced no evidence to support his contention that he paid \$6,799 when he originally filed his 1981 tax return, we must find that he did not make this payment. He, therefore, has not established that he is entitled to the claimed refund.

Although not necessary to determination of this appeal, we note that even if appellant had established that he made the tax payment in question, his claim for refund was properly denied. California personal income tax law contains no provision for a loss carryback. (Appeal of J. Douglas White, Cal. St. Bd. of Equal., April 5, 1976.) Appellant seems to base his argument on subsection (c) of section 1212 of the Internal Revenue Code which, under certain circumstances, allows losses incurred in connection with commodity futures contracts to be carried back to prior tax years. This argument is without merit since section 18222 of the Revenue and Taxation Code, the California counterpart to section 1212 of the Internal Revenue Code, was enacted without including the loss carryback provision allowed under federal law. (Rev. & Tax. Code, § 18222, repealed by Stats. 1983, Ch. 488, eff. July 28, 1983.)

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For the foregoing reasons, respondent's action'
must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Russell G. Holt for refund of personal income tax in the amount of \$5,367 for the year 1981, be and the same is hereby sustained,,

Done at Sacramento, California, this 8th day of January , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section '7 .9